IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

M.C.C.NO. 02 OF 2005 Single Bench

PETITIONER : SMT. ANUPAMA KEDIA W/O MANOJ KEDIA aged about 28 years, D/o Gopal Prasad Agrawal, at present residing at Vinoba Nagar, Thana Tarbahar, Tahsil and Distt Bilaspur (CG).

P.F. No. 2910/Lco Presented by Shri Deepak Jain dated 21.12.04

Versus

RESPONDENT : Manoj Kumar Kedia S/o Keshav Prasad Kedia, aged about 35 years, resident of Near Vijaya Talkies, Transport Nagar Korba, District Korba (CG).

APPLICATION UNDER SECTION 24 OF CIVIL PROCEDURE CODE

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A.F.R.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

08-12-2006

Petitioner **Smt. Anupama Kedia** by Ms. Sharmila Singhai, Advocate.

Respondent **Manoj Kumar Kedia** by Shri Parag Kotecha, Advocate.

Heard on I.A.No.3984/2006 which is an application for amendment in the body of the petition for transfer of case No.14-A/2002 under Section-24 of C.P.C. pending before the Principal Judge, Family Court, KORBA to BILASPUR. In support of the amendment application, the petitioner has also filed copies of Order sheets dated 13-10-2006 and 07-11-2006 recorded by the learned Principal Judge, Family Court, Korba.

I.A.No.3984/2006 is allowed. Amendment be incorporated in the body of the petition today.

With the consent of learned counsel for the parties, arguments on application under Section-24 of C.P.C. were finally heard at the admission stage.

Brief facts are that initially the proceedings were pending before the 3rd Additional District Judge, Korba. The petitioner-wife had moved an application for transfer of the case on the ground of inconvenience. The District Judge, Bilaspur allowed the application and vide order dated 16-09-2003 transferred the case No.14-A/2002 from the Court of 3rd Additional District Judge, F.T.C., KORBA to the Court of 5th Additional District Judge, Bilaspur. After the formation of Korba as a Judicial District, this case No.14-A/2002 stood transferred automatically to the Family Court, Korba. Evidence of parties has been recorded by the Principal Judge, Family Court, Korba and the case is at the stage of final arguments.

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आदेश पत्रक (पूर्वानुबद्ध)

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Ms. Sharmila Singhai, learned counsel for the petitioner has pressed the application under Section-24 of C.P.C. only on the following ground which has been incorporated by the petitioner by amendment today and on no other ground:

> "The attitude of the Family Learned Court below reveals that it is biased in favour of the respondent and as such the applicant is not likely to get a fair opportunity and fair justice in the case."

Arguments were heard.

Ms. Sharmila Singhai, learned counsel for the petitioner placed reliance on **A.I.R.-1951-Calcutta-286, A.I.R.-1957-Patna-198, 2002-A.I.H.C.-1938 (Orissa), A.I.R.-1965-S.C.-720, A.I.R.-2003 (Rajasthan)-62 and A.I.R.-2002-S.C.-396** while contending that the manner in which the Principal Judge, Family Court, Korba conducted the proceedings on 13-10-2006 and 07-11-2006 there is a reasonable apprehension in the mind of the petitioner that the trial is not a fair and impartial trial and that she would not receive justice in the Family Court, Korba.

On the other hand, Shri Parag Kotecha, learned counsel for the respondent opposed the prayer and placed reliance on **A.I.R.-1999-S.C.-1524, A.I.R.-1992-S.C.-1133, 2004 (13) S.C.C.-436, A.I.R.-2003-Karnataka-39, A.I.R.-1988-Gujrat-63, A.I.R.-1995-Karnataka-112, A.I.R.-1987-M.P.-41, A.I.R.-1972-Kerala-263, 2004 (13)-S.C.C.-634** and **2004 (13)-S.C.C.-694** while contending that the apprehension in the mind of the petitioner about not getting a fair trial was absolutely baseless and not borne out from the order sheet dated 13-10-2006 & 07-11-2006 of Family Court, Korba. It was also contended that in order to infuse confidence in the parties the learned Principal Judge, Family Court, Korba had taken care to record the order sheets in great details while incorporating the time of the proceedings also.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Having heard rival contentions, I have perused the order sheets dated 13-10-2006 & 07-11-2006 which runs into 8 pages. The guiding principle which weighs with the Court while considering an application under Section-24 of C.P.C. has been succinctly narrated in **Lalit Rajya Laxmi and another Vs. State of Bihar** reported in **A.I.R-1957-Patna-198** which is extracted as under:-

> *"It is not merely of some importance, but is of fundamental importance that justice should not only be done but should manifestly, and undoubtedly, seem to be done. The pure fountain of justice must not only remain unsullied from within, but it must also, even on the surface and outside appear and actually remain unpolluted, so that the confidence of the citizens of the country in the judicial administration of the country may remain unshaken. Confidence in the Court administering justice on the part of both parties and of the public is a vital element in the administration of justice. If the admitted facts are apt, or at least are capable of being used, to destroy this confidence, the supreme needs of justice are clearly such as not to allow the ordinary course of justice to be left untouched, but to transfer the case from such Court. It is as such not only necessary that justice should be done; it is also necessary that it should be plain to all including those proceeded against that it is being done. "*

> ***"Therefore, if there are circumstances in a case, which raise a reasonable apprehension in the mind of the person applying for transfer that he would not receive fair dealings at his trial, or, in other words, that he may not have a fair and impartial trial, and may not get justice in the court, where the suit is pending, the case should be transferred. In such a case, in order to decide whether the facts and circumstances are sufficient to raise such a reasonable apprehension in the mind of the party applying for transfer, the court should put himself in such a party's arm-chair; and then alone the Court is at liberty to place himself in the position of, and, the same situation in which, the party himself stood, with the knowledge of all the facts with which the party was acquainted, and, then only the Court can see and judge for himself how these facts would have affected the party's mind, and, if they are reasonable and sufficient to raise the reasonable apprehension complained of in the mind***

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of even a reasonable person."

Applying the fundamental principles enunciated above and also considering the manner in which the learned Principal Judge, Family Court, Korba conducted the proceedings and for the following reasons, I am of the considered opinion that a reasonable apprehension has arisen in the mind of the petitioner that she is not likely to receive justice at the hands of the learned Principal Judge, Family Court, Korba:

(A) At the time of recording evidence, the manner in which the learned Principal Judge, Family Court, Korba cross-examined the witnesses of the applicant-husband, a reasonable doubt arose in the mind of non-applicant-wife that the Judge was not acting in a fair manner and it was for this reason that in para-14 of the order sheet dated 07-11-2006 an objection was raised by the father of the non-applicant-wife that the learned Principal Judge should not cross-examine her witnesses and allow them to be cross-examined by the husband.

(B) Para-22 of the order sheet dated 07-11-2006 explicitly shows that with the consent of the parties, the evidence of parties was closed and the case was listed for final arguments on 14-11-2006. If it were so, then there was no need for the appearance of non-applicant-wife thereafter and to pray for adducing evidence. The order sheet written by the learned Principal Judge, Family Court, Korba later on, on the same day goes to show that during the proceedings again, father of the non-applicant-wife had lost complete faith and even refused to sign the order sheets till they were completed and signed by the learned Principal Judge, Family Court, Korba.

(C) It is also clear from the perusal of the order sheets written by the learned Principal Judge, Family Court, korba that at several places several corrections and additions of substance have been made by the learned Principal Judge, Family Court, Korba in his own handwriting and the time of the proceedings was also mentioned. The manner in which the learned Principal Judge, Family Court, Korba recorded lengthy order sheets running into 8

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आदेश पत्रक (पूर्वानुबद्ध)

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pages clearly goes to show that the judge was completely at the defensive and wanted to project that he was being fair.

(D) It is also worth mentioning that on 07-11-2006 the learned Principal Judge, Family Court, Korba stayed in the Court up to 7.15 P.M. to record the evidence.

In the ultimate analysis, the cumulative effect of all the circumstances and facts stated above, is certainly such that even a reasonable man might reasonably be expected to have a reasonable apprehension that he will not have a fair trial before the court concerned. So far as the case law cited at the Bar is concerned, it is not possible to get similarity of facts and circumstances with the facts of the present case in all respects, but, in my opinion, the circumstances enumerated above taken conjunctively do show that these circumstances are quite sufficient to raise reasonable apprehension in the mind of the petitioner that she will not get justice in the Court of Principal Judge, Family Court, Korba. It is therefore expedient in the interest of justice that the case No.14-A/2002 be transferred from the Court of learned Principal Judge, Family Court, Korba to the Court of Principal Judge, Family Court, Bilaspur.

Accordingly, it is ordered that the Case No.14-A/2002 is transferred from the Court of Principal Judge, Family Court, Korba to the Court of Principal Judge, Family Court, Bilaspur who shall after giving sufficient opportunity of hearing to the parties, proceed to decide the case as expeditiously as possible. The Principal Judge, Family Court, Korba shall transmit the record of case No.14-A/2002 to the Principal Judge, Family Court, Bilaspur forthwith. Registry shall send a copy of this order to the Principal Judge, Family Court, Korba immediately.

P.T.O.

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	Parties shall appear before the learned Principal Judge, Family Court, Bilaspur on 19-12-2006. Certified copy as per rules.	Sd/- Dilip Raosaheb Deshmukh Judge

P.T.O.